

## LABOUR DEPARTMENT

The 2nd July, 1986

No. 9/9/86-6Lab./5306.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s The Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI R. N. BATRA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Complaint No. 11/1982

*between*

SHRI OM PARKASH, COMPLAINANT,  
C/O BHARTIYA MAZDOOR SANGH,  
G.T. ROAD, PANIPAT AND THE  
MANAGEMENT OF M/S THE PANIPAT  
CO-OPERATIVE SUGAR MILLS LTD.,  
PANIPAT

Present:

Shri N. R. Munjal, for the Com-  
plainant.

Shri R. S. Malik, for the Management.

## AWARD

The present complaint, dated 16th December, 1982 has been filed under Section 33-A of the Industrial Disputes Act, 1947, by Shri Om Parkash, Complainant and the Management of M/s. The Panipat Co-operative Sugar Mills Ltd., Panipat, through its Managing Director (hereinafter referred to as Respondent Mills), in which it is alleged that in General Reference No. 387/1981, the complainant was one of the workmen, whose case for being made seasonal permanent workman was pending. It was further alleged that the respondent Mills had to take the complainant on duty at the start of the crushing season on 29th November, 1982, but the respondent had refused the complainant to take him on duty and as such

was guilty of contravention of Section 33 of the Industrial Disputes Act, 1947, as the service condition of the complainant could not be changed during the pendency of General Reference No. 387/1981.

2. The respondent Mills in its written statement, dated 24th January, 1983 pleaded that General Reference No. 387/1981 was pending. It was further pleaded that the complainant was a casual worker and used to be engaged off and on as per exigencies of work and that the respondent was not under any obligation to call the complainant for work but he should have enquired about the availability of the work in the respondent Mills. It was denied that the respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947.

3. The complainant in his rejoinder, dated 23rd February, 1983 reiterated the pleas taken in the complaint.

4. On the pleadings of the parties, the following issues were framed on 23rd February, 1983:—

- (1) Whether there is relationship of employee and employer between the parties ? OPA
- (2) In case issue No. 1 is proved, whether the management has contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 ? OPA

5. It may be mentioned that the complainant has appeared in the witness-box, while the management has also examined one witness. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

## ISSUE NO. 1:

6. The complainant Shri Om Parkash has appeared as WW-1 and stated that he was working in the respondent Mills right from the beginning, but he was not allowed to join duty on 28th November, 1982, due to which the present complaint was filed by him.

7. The management has examined MW-1 Shri Hem Raj, Senior Time Keeper, who stated that the complainant was employed on daily wages. He further stated that the services of the complainant were not terminated but he did not turn up during the start of season for the year 1982-83. In cross-examination, he admitted that the complainant had worked during five seasons in the respondent Mills and his working days were 101/204 days during 1977-78, 116/147 days during 1978-79, 66/87 days during 1979-80, 87/110 days during 1980-81 and 99/191 days during 1981-82. He further stated that actual working days had been mentioned by him, which did not include weekly rest, but included national holidays. He further stated that festival holidays were given to daily rated workers. He further stated that daily rated workers were entitled to holidays. In the ruling reported as *Workmen of American Express International Banking Corporation and Management of American International Banking Corporation*, 1985(5) FIR 481, it is laid down that Sundays and other paid holidays be treated as days "actually worked under the employer". Following this ruling and the number of days, the complainant worked in the respondent Mills during the last five seasons, it is apparent that the complainant had worked for five seasons in the respondent Mills. The respondent did not terminate the services of the complainant as admitted by MW-1 Shri Hem Raj, but took the plea that the complainant did not turn up at the start of season for the year 1982-83. *Firstly*, it cannot be believed that a poor worker, who was coming to the Sugar Mills for the last five seasons, would not turn up when the next crushing season started for the year 1982-83. *Secondly*, the present complaint was immediately filed by the complainant on 16th December, 1982, in which it is mentioned that the respondent Mills did not allow him to join duty on 29th November, 1982. Consequently, the plea taken by the management that the complainant did not come for duty on 29th November, 1982 when the crushing season started cannot be accepted. As such, the relationship of employer and employee between the complainant and the Sugar Mills existed

when the complaint was filed by the complainant and that the respondent Sugar Mills was not permitting the complainant to join duty who was serving the respondent Mills for the last five seasons. The issue is decided accordingly in favour of the complainant and against the management.

#### ISSUE NO. 2:

9. MW-1 Shri Hem Raj, Senior Time Keeper, admitted in cross-examination that out of daily coolies, some workers were appointed on permanent basis by selection after holding the interview. He further stated that some workers were made permanent, who were previously daily rated coolies. He also stated that out of 25 workers, who had given the General Demand Notice, 11 workers had been made permanent. The complainant was a daily rated/casual worker and was working in the respondent Mills for the last five seasons and he was one of the workers, who had given the General Demand Notice and Reference No. 387/1981 was pending when the present complaint was made. The demand of the complainant in the General Demand Notice was that they should be absorbed against seasonal/permanent posts. That reference has been decided today separately in favour of the workmen. Consequently, during the pendency of the General Reference, the management could not refuse employment to the complainant, who was a daily rated/casual worker during the last five seasons. Section 33(A) of the Industrial Disputes Act, 1947, lays down that during the pendency of any proceedings before the Industrial Tribunal in respect of an industrial dispute no employer shall in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings. The refusal of the management to give work to the complainant as daily rated/casual worker on 29th November, 1982, thus amounted to alteration in the condition of the service of the complainant as envisaged in Section 33(1) of the Industrial Disputes Act, 1947, which act of the respondent is depriving the complainant to get his case considered by the

Selection Committee for his absorption against seasonal/permanent post on the basis of seniority-cum-merit. It is thus held that the respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947. The complainant was not getting fixed wages and was a daily rated casual workman. Therefore, his complaint is accepted and he should be taken back on duty by the management, but without payment of back wages, but his past service will be taken into consideration by the Selection Committee, while considering his case on seniority-cum-merit for absorption against seasonal/permanent post. The award is passed accordingly.

The 5th June, 1986.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad

Endorsement No. 376, dated 5th June, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/9/86-6Lab./5307.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. The Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI R. N. BATRA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Complaint No. 9 of 1982

between

SHRI MAHAVIR, BOILER COOLIE, C/O  
BHARTIYA MAZDOOR SANGH, G.T.

ROAD, PANIPAT, COMPLAINANT AND  
THE MANAGEMENT OF M/S. THE  
PANIPAT CO-OPERATIVE SUGAR  
MILLS LTD., PANIPAT

Present:

Shri N. R. Munjal, for the complainant.

Shri R. S. Malik, for the management.

#### AWARD

The present complaint, dated 3rd December, 1982 has been filed under Section 33-A of the Industrial Disputes Act, 1947, by Shri Mahavir, Boiler Coolie, complainant against M/s. The Panipat Co-operative Sugar Mills Ltd., Panipat, through its Managing Director (hereinafter referred to as respondent Mills), in which it is alleged that in General Reference No. 387/1981, the complainant was one of the workmen, whose case for being made seasonal/permanent workman was pending. It was further alleged that the respondent Mills had to take the complainant on duty at the start of the crushing season on 29th November, 1982, but the respondent had refused the complainant to take him on duty and as such was guilty of contravention of Section 33 of the Industrial Disputes Act, 1947 as the service condition of the complainant could not be changed during the pendency of General Reference No. 387/1981.

2. The respondent Mills in its written statement, dated 24th January, 1983 pleaded that General Reference No. 387/1981 was pending. It was further pleaded that the complainant was a casual worker and used to be engaged off and on as per exigencies of work and that the respondent was not under any obligation to call the complainant for work, but he should have enquired about the availability of the work in the respondent Mills. It was denied that the respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947.

3. The complainant in his rejoinder, dated 23rd February, 1983 reiterated the pleas taken in the complaint.

4. On the pleadings of the parties, the following issues were framed on 23rd February, 1983:—

- (1) Whether there is relationship of employee and employer between the parties ? OPA
- (2) In case issue No. 1 is proved, whether the management has contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 ? OPA

5. It may be mentioned that the complainant has appeared in the witness-box, while the management has also examined one witness. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

#### ISSUE NO. 1:

6. The complainant Shri Mahavir has appeared as WW-1 and stated that he was working in the respondent Mills right from the beginning, but he was not allowed to join duty on 28th November, 1982, due to which the present complaint was filed by him.

7. The management has examined MW-1 Shri Hem Raj, Senior Time Keeper, who stated that the complainant was employed on daily wages. He further stated that the services of the complainant were not terminated, but he did not turn up at the start of season for the year 1982-83. In cross-examination he admitted that the complainant had worked during five seasons in the respondent Mills and his working days were 161/204 days during 1977-78, 112/147 days during 1978-79, 68/87 days during 1979-80, 90/110 days during 1980-81, and 158/191 days during 1981-82. He further stated that actual working days had been mentioned by him, which did not include weekly rest, but included National holidays. He further stated that festival holidays were given to daily rated workers. He further stated that daily rated workers were entitled to holidays. In the ruling reported as *Workmen of American Express International Banking Corporation and*

*Management of American International Banking Corporation*, 1985(5) F.L.R. 481, it is laid down that Sundays and other paid holidays be treated as days "actually worked under the employer". Following this ruling and the number of days, the complainant worked in the respondent Mills during the last five seasons, it is apparent that the complainant had worked for five seasons in the respondent Mills. The respondent did not terminate the services of the complainant as admitted by MW-1 Shri Hem Raj, but took the plea that the complainant did not turn up at the start of seasons for the year 1982-83. *Firstly*, it cannot be believed that a poor worker, who was coming to the Sugar Mills for the last five seasons, would not turn up when the next crushing season started for the year 1982-83. *Secondly*, the present complaint was immediately filed by the complainant on 3rd December, 1982, in which it is mentioned that the respondent Mills did not allow him to join duty on 29th November, 1982. Consequently, the plea taken by the management that the complainant did not come for duty on 29th November, 1982 when the crushing season started cannot be accepted. As such, the relationship of employer and employee between the complainant and the Sugar Mills existed when the complaint was filed by the complainant and that the respondent Sugar Mills was not permitting the complainant to join duty who was serving the respondent Mills for the last five seasons. The issue is decided accordingly in favour of the complainant and against the management.

#### ISSUE NO. 2:

9. MW-1 Shri Hem Raj, Senior Time Keeper admitted in cross-examination that out of daily coolies, some workers were appointed on permanent basis by Selection after holding the interview. He further stated that some workers were made permanent who were previously daily rated coolies. He also stated that out of 25 workers, who had given the General Demand Notice, 11 workers had been made permanent. The complainant was a daily-rated/casual worker and was working in the respondent Mills for the last five seasons and he was one of the workers, who had given the General Demand Notice and Reference No. 387/1981 was pending when the present com-

plaint was made. The demand of the complainant in the General Demand Notice was that they should be absorbed against Seasonal/permanent posts. That reference has been decided today separately in favour of the workmen. Consequently, during the pendency of the General Reference, the Management could not refuse employment to the complainant, who was a daily rated/casual worker during the last five seasons. Section 33(a) of the Industrial Disputes Act, 1947, lays down that during the pendency of any proceedings before the Industrial Tribunal in respect of an Industrial Dispute, no employer shall in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings. The refusal of the management to give work to the complainant as daily rated/casual worker on 29th November, 1982 thus amounted to alteration in the condition of the service of the complainant as envisaged in Section 33(a) of the Industrial Disputes Act, 1947, which act of the respondent is depriving the complainant to get his case considered by the Selection Committee for his absorption against seasonal/permanent post on the basis of seniority-cum-merit. It is thus held that the respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947. The complainant was not getting fixed wages and was a daily rated casual workman. Therefore, his complaint is accepted and he should be taken back on duty by the management, but without payment of back wages, but his past service will be taken into consideration by the Selection Committee while considering his case on seniority-cum-merit for absorption against seasonal/permanent post. The award is passed accordingly.

The 5th June, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 378, dated 5th June, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

The 5th June, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

No. 9/9/86-6Lab./5308.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. The Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI R. N. BATRA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD  
Complaint No. 4/1982

*between*

SHRI ISHWAR DONGA, COMPLAINANT C/O BHARTIYA MAZDOOR SANGH, G.T. ROAD, PANIPAT AND THE MANAGEMENT OF M/S. THE PANIPAT CO-OPERATIVE SUGAR MILLS LTD., PANIPAT

Present:

Shri N. R. Munjal for the complainant.

Shri R. S. Malik for the management.

AWARD

The present complaint, dated 3rd December, 1982 has been filed under Section 33-A of the Industrial Disputes Act, 1947, by Shri Ishwar Donga, complainant against M/s. The Panipat Co-operative

Sugar Mills Ltd., Panipat, through its Managing Director (hereinafter referred to as Respondent Mills), in which it is alleged that in General Reference No. 387/1981, the complainant was one of the workmen, whose case for being made seasonal/permanent workman was pending. It was further alleged that the respondent Mills had to take the complainant on duty at the start of the crushing season on 29th November, 1982, but the respondent had refused the complainant to take him on duty and as such was guilty of contravention of Section 33 of the Industrial Disputes Act, 1947, as the service condition of the complainant could not be changed during the pendency of General Reference No. 387/1981.

2. The respondent Mills in its written statement, dated 24th January, 1983 pleaded that General Reference No. 387/1981 was pending. It was further pleaded that the complainant was a casual worker and used to be engaged off and on as per exigencies of work and that the respondent was not under any obligation to call the complainant for work, but he should have enquired about the availability of the work in the respondent Mills. It was denied that the respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947.

3. The complainant in his rejoinder, dated 23rd February, 1983 reiterated the pleas taken in the complaint.

4. On the pleadings of the parties, the following issues were framed on 23rd February, 1983:—

- (1) Whether there is relationship of employee and employer between the parties ? OPA
- (2) In case issue No. 1 is proved, whether the management has contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 ? OPA

5. It may be mentioned that the complainant appeared in the witness-box, while the management has also examined one witness. After going through the

entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

#### ISSUE NO. 1:

6. The complainant Shri Ishwar has appeared as WW-1 and stated that he was working in the respondent Mills right from the beginning, but he was not allowed to join duty on 28th November, 1982, due to which the present complaint was filed by him.

7. The management has examined MW-1 Shri Hem Raj, Senior Time Keeper, who stated that the complainant was employed on daily wages. He further stated that the services of the complainant were not terminated but he did not turn up at the start of season for the year 1982-83. In cross-examination, he admitted that the complainant had worked during 5 seasons in the respondent Mills and his working days were 170/204 during 1977-78, 123/147 days during 1978-79, 77/87 days during 1979-80, 80/110 days during 1980-81, 156/191 days during 1981-82. He further stated that actual working days had been mentioned by him, which did not include weekly rest, but included National holidays. He further stated that festival holidays were given to daily workers. He further stated that daily rated workers were entitled to holidays. In the ruling reported as *Workmen of American Express International Banking Corporation and Management of American International Banking Corporation*, 1985 (5) FLR 481, it is laid down that Sundays and other paid holidays be treated as days "actually worked under the employer". Following this ruling and the number of days, the complainant worked in the respondent Mills during the last five seasons, it is apparent that the complainant had worked for five seasons in the respondent Mills. The respondent did not terminate the services of the complainant as admitted by MW-1 Shri Hem Raj, but took the plea that the complainant did not turn up at the start of season for the year 1982-83. *Firstly*, it cannot be believed that a poor worker who was coming to the Sugar Mills for the last five seasons would not turn up when the next crushing season started for the year 1982-83. *Secondly*, the present complaint was immediately

filed by the complainant on 3rd December, 1982, in which it is mentioned that the respondent Mills did not allow him to join duty on 29th November, 1982. Consequently the plea taken by the management that the complainant did not come for duty on 29th November, 1982 when the crushing season started cannot be accepted. As such, the relationship of employer and employee between the complainant and the Sugar Mills existed when the complaint was filed by the complainant and that the respondent Sugar Mills was not permitting the complainant to join duty, who was serving the respondent Mills for the last five seasons. The issue is decided accordingly in favour of the complainant and against the management.

#### ISSUE NO. 2:

9. MW-1 Shri Hem Raj, Senior Time Keeper, admitted in cross-examination that out of daily coolies, some workers were appointed on permanent basis by selection after holding the interview. He further stated that some workers were made permanent, who were previously daily rated coolies. He also stated that out of 25 workers, who had given the General Demand Notice, 11 workers, had been made permanent. The complainant was a daily rated/casual worker and was working in the respondent Mills for the last five seasons and he was one of the workers, who had given the General Demand Notice and Reference No. 387/81 was pending when the present complaint was made. The demand of the complainant in the General Demand Notice was that they should be absorbed against seasonal/permanent posts. That reference has been decided today separately in favour of the workmen. Consequently, during the pendency of the General Reference, the management could not refuse employment to the complainant, who was a daily rated/casual worker during the last five seasons. Section 33-A of the Industrial Disputes Act, 1947, lays down that during the pendency of any proceedings before the Industrial Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter,

to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings. The refusal of the management to give work to the complainant as daily rated/casual worker on 29th November, 1982 thus amounted to alteration in the condition of the service of the complainant as envisaged in Section 33(1) of the Industrial Disputes Act, 1947, which act of the respondent is depriving the complainant to get his case considered by the Selection Committee for his absorption against seasonal permanent post on the basis of seniority-cum-merit. It is thus held that the Respondent Mills contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947. The complainant was not getting fixed wages and was a daily rated/casual workman. Therefore, his complaint is accepted and he should be taken back on duty by the management, but without payment of back wages, but his past service will be taken into consideration by the Selection Committee while considering his case on seniority-cum-merit for absorption against seasonal/permanent post. The award is passed accordingly.

The 5th June, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 379, dated 5th June, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

The 5th June, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.